

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**Chris Langer,**

Plaintiff,

v.

**Fidel M. Montanez**, in his  
individual and representative  
capacity as trustee of the Fidel M.  
Montanez Trust;  
**Fidel's Little Mexico, Inc.**, a  
California Corporation; and Does 1-  
10,

Defendants.

Case No. **'14CV2499 W MDD**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act;  
California Disabled Persons Act;  
Negligence**

Plaintiff Chris Langer complains of Defendants Fidel M. Montanez, in his individual and representative capacity as trustee of the Fidel M. Montanez Trust; Fidel's Little Mexico, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has

1 a specially equipped van with a ramp that deploys out of the passenger side  
2 of his van and he has a Disabled Person Parking Placard issued to him by the  
3 State of California.

4 2. Defendants are, or were at the time of the incidents, the real property  
5 owners, business operators, lessors and/or lessees for Fidel's Little Mexico  
6 restaurant ("Restaurant") located at or about 607 Valley Avenue, Solana  
7 Beach, California.

8 3. Plaintiff does not know the true names of Defendants, their business  
9 capacities, their ownership connection to the property and business, or their  
10 relative responsibilities in causing the access violations herein complained  
11 of, and alleges a joint venture and common enterprise by all such  
12 Defendants. Plaintiff is informed and believes that each of the Defendants  
13 herein, including Does 1 through 10, inclusive, is responsible in some  
14 capacity for the events herein alleged, or is a necessary party for obtaining  
15 appropriate relief. Plaintiff will seek leave to amend when the true names,  
16 capacities, connections, and responsibilities of the Defendants and Does 1  
17 through 10, inclusive, are ascertained.

18  
19 **JURISDICTION & VENUE:**

20 4. This Court has subject matter jurisdiction over this action pursuant to  
21 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
22 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

23 5. Pursuant to pendant jurisdiction, an attendant and related cause of  
24 action, arising from the same nucleus of operative facts and arising out of  
25 the same transactions, is also brought under California's Unruh Civil Rights  
26 Act, and the California Disabled Persons Act, which acts expressly  
27 incorporate the Americans with Disabilities Act.

28 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action  
2 is located in this district and that Plaintiff's cause of action arose in this  
3 district.

4  
5 **FACTUAL ALLEGATIONS:**

6 7. The Plaintiff went to the Restaurant in July of 2014, to eat.

7 8. The Restaurant is a facility open to the public, a place of public  
8 accommodation, and a business establishment.

9 9. Parking spaces are one of the facilities, privileges and advantages  
10 offered by defendants to their customers at the Restaurant.

11 10. Unfortunately, although parking spaces are one of the facilities  
12 available to patrons of the Restaurant, there are not enough handicap-  
13 accessible parking spaces in the parking lot serving the Restaurant. Even  
14 though there are about 65 parking spaces serving the Restaurant, there are  
15 just two parking spaces reserved for disabled persons. On the day of  
16 plaintiff's visit, both of these parking spaces were taken.

17 11. Additionally, the handicap parking stalls and access aisles are not  
18 level. Indeed, the slopes are greater than that allowed by law.

19 12. The plaintiff personally encountered these problems. This inaccessible  
20 condition denied the plaintiff full and equal access and caused him difficulty  
21 and frustration.

22 13. Plaintiff would like to return and patronize the Restaurant but will be  
23 deterred from visiting until the defendants cure the violations. Plaintiff lives  
24 in the county and visits this area of San Diego often. This Restaurant is  
25 conveniently located. Plaintiff would like to return and eat.

26 14. The defendants have failed to maintain in working and useable  
27 condition those features required to provide ready access to persons with  
28 disabilities.

1        15. Given the obvious and blatant violations, the plaintiff alleges, on  
2 information and belief, that there are other violations and barriers on the site  
3 that relate to his disability. Plaintiff will amend the complaint, to provide  
4 proper notice regarding the scope of this lawsuit, once he conducts a site  
5 inspection. However, please be on notice that the plaintiff seeks to have all  
6 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191  
7 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,  
8 he can sue to have all barriers that relate to his disability removed regardless  
9 of whether he personally encountered them).

10        16. Additionally, on information and belief, the plaintiff alleges that the  
11 failure to remove these barriers was intentional because: (1) these particular  
12 barriers are intuitive and obvious; (2) the defendants exercised control and  
13 dominion over the conditions at this location and, therefore, the lack of  
14 accessible facilities was not an “accident” because had the defendants  
15 intended any other configuration, they had the means and ability to make the  
16 change.

17  
18 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
19 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against  
20 all defendants (42 U.S.C. section 12101, et seq.)

21        17. Plaintiff repleads and incorporates by reference, as if fully set forth  
22 again herein, the allegations contained in all prior paragraphs of this  
23 complaint.

24        18. Under the ADA, it is an act of discrimination to fail to ensure that the  
25 privileges, advantages, accommodations, facilities, goods and services of  
26 any place of public accommodation is offered on a full and equal basis by  
27 anyone who owns, leases, or operates a place of public accommodation. See  
28 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix “D.”
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

19. Any business that provides parking spaces must provide a sufficient number of handicap parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. According to the 1991 Standards, if a parking lot has 65 spaces, it must have 3 accessible parking spaces. 1991 Standards § 4.1.2(5)(a). Under the 2010 Standards, a parking lot with 65 parking spaces must have 3 accessible spaces. 2010 Standards § 208.2.

20. Here, the lack of enough handicap-accessible parking spaces is a violation of the law.

21. Under the 1991 Standards, parking spaces and access aisles must be level with surface slopes not exceeding 1:50 (2%) in all directions. 1991

Standards § 4.6.2.

22. Here, the access aisle and parking spaces are not level and have slopes that exceed 2%. Under the 2010 Standards, access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted. 2010 Standards § 502.4.

23. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

24. Here, the failure to ensure that the accessible parking was available and ready to be used by the plaintiff is a violation of the law.

**II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ § 51-53)

25. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

26. Because the defendants violated the plaintiffs' rights under the ADA, they also violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f), 52(a).)

27. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiffs, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

1 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**  
2 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and  
3 against all defendants) (Cal Civ. § 54-54.8)

4 28. Plaintiff repleads and incorporates by reference, as if fully set forth  
5 again herein, the allegations contained in all prior paragraphs of this  
6 complaint.

7 29. Because the defendants violated the plaintiff's rights under the ADA,  
8 they also violated the Disabled Persons Act and are liable for damages. (Civ.  
9 Code § 54.1(d), 54.3(a).)

10 30. Because the violation of the Disabled Persons Act resulted in  
11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
13 55.56(a)-(c).)

14  
15 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of  
16 plaintiff and against all defendants)

17 31. Plaintiff repleads and incorporates by reference, as if fully set forth  
18 again herein, the allegations contained in all prior paragraphs of this  
19 complaint.

20 32. The Defendants had a general duty and a duty arising under the  
21 Americans with Disabilities Act and the Unruh Civil Rights Act and  
22 California Disabled Persons Act to provide safe, convenient, and accessible  
23 facilities to the plaintiffs. Their breach of this duty, as alleged in the  
24 preceding paragraphs, has caused injury and damage as alleged above.

1           **PRAYER:**

2           Wherefore, Plaintiff prays that this court award damages and provide  
3 relief as follows:

4           1. For injunctive relief, compelling defendants to comply with the  
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
6 Plaintiffs are not invoking section 55 of the California Civil Code and is not  
7 seeking injunctive relief under the Disabled Persons Act at all.

8           2. Damages under the Unruh Civil Rights Act and/or the California  
9 Disabled Persons Act which damages provide for actual damages and a  
10 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both  
11 acts, simultaneously, and an election will be made prior to or at trial.

12           3. Reasonable attorney fees, litigation expenses and costs of suit,  
13 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

14           Dated: August 11, 2014

CENTER FOR DISABILITY ACCESS

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16           By: 

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18           \_\_\_\_\_  
19           Mark Potter, Esq.  
20           Attorneys for Plaintiff  
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